

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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Refer Reply To:

CC:CORP:2

PLR-155642-07

Date:

April 24, 2008

Legend

Distributing =

Controlled =

Sub 1 =

Year 1 =

Date 1 =

Business A =

Business B =

Business C =

Business D =

Business E =

Business F	=
Class X Stock	=
Class Y Stock	=
Group X	=
Group Y	=
Exchange	=
Payable	=
Stock Option Plan	=
<u>a</u>	=
<u>b</u>	=
<u>c</u>	=
<u>d</u>	=
<u>e</u>	=

Dear _____ :

This letter responds to your December 19, 2007, request for rulings on certain federal income tax consequences of a series of proposed transactions (collectively, the "Proposed Transactions"). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding

whether the Distribution (defined below): (i) satisfies the business purpose requirement of Treas. Reg. section 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. section 1.355-2(d)); and (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. section 1.355-7).

Summary of Facts

Distributing is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing is a holding company that owns the stock of several subsidiaries, including approximately a percent of the stock of Sub 1 and all of the stock of Controlled, both of which have been members of the Distributing affiliated group for more than five years. Sub 1 and its subsidiaries are engaged in Business A. Through its direct and indirect subsidiaries (other than Controlled and its subsidiaries), Distributing is also engaged in Business B, Business C, Business D and Business E.

Controlled conducts Business F through its wholly owned subsidiaries and has outstanding one class of common stock, all of which is owned by Distributing (the "Controlled Common Stock"). Distributing has held all of its shares of Controlled Common Stock for more than five years.

Distributing has two classes of stock outstanding, Class X Stock and Class Y Stock, each of which is publicly traded and listed on the Exchange. The Class Y Stock reflects the economic performance of Group Y, which consists of Distributing's stock ownership interest in Controlled and all distributions therefrom, a Payable (which will be repaid in its entirety prior to the Proposed Transactions), and any liabilities, costs and expenses attributable to Controlled or Business F or the past, present or future business of Controlled. The Class X Stock reflects the economic performance of Group X, which consists of all of Distributing's assets and liabilities other than the economic interest in Group Y represented by the outstanding Class Y Stock, and includes as an asset the Payable. As of Date 1, there were approximately b shares of Class Y Stock outstanding representing a c percent economic interest in Group Y.

Distributing has also granted options to purchase shares of Class Y Stock and stock appreciation rights based on the performance of the Class Y Stock to employees of Controlled and its subsidiaries under the Stock Option Plan.

Beginning in Year 1, Sub 1 has disposed of certain non-core businesses related to Business A, as described in the ruling request. Distributing has submitted financial

information indicating that Business A and Business F each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Proposed Transactions

For what are represented to be valid business purposes, the following transactions have been proposed:

- (i) Controlled will increase the authorized number of its shares and subdivide the existing outstanding shares of Controlled Common Stock into a number of shares equal to the number of shares of Class Y Stock issued and outstanding at that time divided by a fraction that represents the interest in the economic performance of Group Y reflected by the Class Y Stock issued to the public (the "Recapitalization").
- (ii) Distributing will distribute one share of Controlled Common Stock in complete redemption of each issued and outstanding share of Class Y Stock (the "Redemption").
- (iii) Distributing intends to commence an exchange offer, which is expected to close on or about the date of the Redemption (the "Exchange Offer"). Pursuant to the Exchange Offer, Distributing will offer to exchange all of its remaining shares of Controlled Common Stock for outstanding shares of Class X Stock. The exchange ratio for the Exchange Offer will be determined under a formula to be set by Distributing and is expected to include a premium to induce Distributing shareholders to tender their Class X Stock in the Exchange Offer.
- (iv) If all of the shares of Controlled Common Stock held by Distributing after the Redemption are not subscribed for in the Exchange Offer, or if the Exchange Offer is not commenced or consummated, the balance of the Controlled Common Stock held by Distributing will be distributed, as promptly as practicable, to the remaining holders of Class X Stock on a pro rata basis (the "Clean-up Dividend," and collectively with the Exchange Offer, the "Back-end Distribution"). The Redemption and the Back-end Distribution are collectively referred to herein as the "Distribution."
- (v) Distributing will not distribute fractional shares of Controlled Common Stock in the Back-end Distribution. Rather, the distribution agent will aggregate and sell on the open market all fractional shares of Controlled Common Stock and distribute to each holder of Class X Stock that

otherwise would receive a fractional share of Controlled Common Stock in the Back-end Distribution its proportionate share of the net proceeds of such sale.

- (vi) Each holder of an option to purchase shares of Class Y Stock or stock appreciation rights ("SARs") based on the performance of the Class Y Stock will receive options or SARs issued by Controlled with respect to Controlled Common Stock that contain substantially similar terms and conditions.
- (vii) In connection with the Distribution, Distributing and Controlled will enter into an agreement intended to govern the relationship between them (and their respective affiliates) after the Distribution (the "Separation Agreement"). The Separation Agreement will include cross-indemnification provisions relating to certain liabilities, including those related to the operation of their respective businesses, and other matters.

Representations

The following representations have been made with respect to the Proposed Transactions:

- (a) The fair market value of the Controlled Common Stock received by each holder of Class Y Stock in the Redemption will be approximately equal to the fair market value of the shares of Class Y Stock surrendered by the shareholder in exchange therefor.
- (b) The fair market value of the Controlled Common Stock (and cash in lieu of fractional shares) received by each holder of Class X Stock in the Exchange Offer will be approximately equal to the fair market value of the shares of Class X Stock surrendered by the shareholder in exchange therefor.
- (c) No part of the consideration distributed by Distributing with respect to the Class X Stock and the Class Y Stock will be received by a shareholder of Distributing as a creditor, employee or in any capacity other than as that of a shareholder of Distributing.
- (d) Each of Distributing and Controlled will treat all members of its respective separate affiliated group (as defined in section 355(b)(3)(B)) as one corporation in determining whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.

- (e) The five years of financial information submitted on behalf of the business conducted by Sub 1 and its subsidiaries (each a member of the separate affiliated group (as defined in section 355(b)(3)(B) of which Distributing is the common parent (the "Distributing SAG")) is representative of the present business operations of Business A (except for the disposition of certain non-core businesses beginning in Year 1), and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) The five years of financial information submitted on behalf of the business conducted by Controlled and its subsidiaries (each a member of the separate affiliated group (as defined in section 355(b)(3)(B) of which Controlled is the common parent (the "Controlled SAG")) is representative of the present business operations of Business F, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (g) Following the Distribution, the Distributing SAG and the Controlled SAG will each continue the active conduct of its business, independently and with its separate employees.
- (h) The Distribution is being carried out for the following corporate business purposes: to allow Distributing's and Controlled's management to focus their respective efforts and deploy their respective capital on their own individual strategic priorities, to enhance Controlled's ability to attract and retain senior management and board members, to provide Controlled with access to competitively priced capital, to allow Controlled to use its stock as acquisition currency, and to improve the reputation of Distributing among rating agencies with the goal of improving the long-term financial strength and risk profile of Distributing and its subsidiaries. The Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (i) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (j) For purposes of section 355(d), immediately after the Redemption and the Back-end Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the period (determined after applying section

355(d)(6)) beginning 5 years prior to the date of the Redemption and ending on the date of the Distribution.

- (k) For purposes of section 355(d), immediately after the Redemption and the Back-end Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (1) acquired by purchase (as defined in sections 355(d)(5) and (8)) during the period (determined after applying section 355(d)(6)) beginning 5 years prior to the date of the Redemption and ending on the date of the Distribution, or (2) attributable to distributions on Distributing stock that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the period (determined after applying section 355(d)(6)) beginning 5 years prior to the date of the Redemption and ending on the date of the Distribution.
- (l) Distributing neither accumulated its receivables nor made any extraordinary payment of its payables in anticipation of the Distribution.
- (m) No intercorporate debt will exist between Distributing (and its subsidiaries) and Controlled (and its subsidiaries) at the time of, or subsequent to, the Distribution, other than obligations arising under the Separation Agreement.
- (n) Immediately before the Redemption, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. sections 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. section 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to the Controlled stock will be included in income immediately before the Redemption (see Treas. Reg. section 1.1502-19).
- (o) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (p) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. section 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

- (q) The Class Y Stock constitutes stock of Distributing for federal income tax purposes.
- (r) No person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing or Controlled immediately after the Distribution.
- (s) It is expected that the Redemption and the Exchange Offer will be consummated within d of each other and, in any event, the Back-end Distribution will be completed within e following consummation of the Redemption.
- (t) After the Redemption, no director, officer or key employee of Distributing or any of its subsidiaries will be a director, officer or key employee of Controlled or any of its subsidiaries.
- (u) The payment of cash in lieu of fractional shares of Controlled Common Stock, if any, pursuant to the Back-end Distribution is solely for the purpose of avoiding the expense and inconvenience of issuing and maintaining fractional shares and will not represent separately bargained for consideration. It is expected that the total amount of cash paid in lieu of fractional shares of Controlled Common Stock will not exceed one percent of the total consideration that will be distributed to holders of Class X Stock in the Back-end Distribution. It is intended that no holder of Class X Stock will receive cash in lieu of fractional shares in an amount equal to or greater than the value of one whole share of Controlled Common Stock.

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows:

- (1) No gain or loss will be recognized by holders of Class X Stock or Class Y Stock upon the receipt of shares of Controlled Common Stock in the Distribution. Section 355(a).
- (2) No gain or loss will be recognized by Distributing upon the distribution of shares of Controlled Common Stock in the Distribution. Section 355(c)(1).
- (3) The basis of the Controlled Common Stock received in the Redemption in the hands of a holder of Class Y Stock will be the same as the basis of the Class Y Stock exchanged therefor. Section 358(a).

- (4) The basis of the Controlled Common Stock in the hands of a holder of Class X Stock who exchanges shares of Class X Stock for Controlled Common Stock in the Exchange Offer will be the same as the basis of the Class X Stock exchanged therefor. Section 358(a).
- (5) To the extent that shares of Controlled Common Stock are distributed to holders of Class X Stock on a pro rata basis pursuant to the Clean-up Dividend, the aggregate basis of the Class X Stock and the Controlled Common Stock in the hands of such holders will be the same as the basis of the Class X Stock on which such distribution was made, allocated in proportion to the fair market values of the Class X Stock and the Controlled Common Stock. Section 358(a).
- (6) If a holder of Class X Stock or Class Y Stock that purchased or acquired such shares on different dates or at different prices is not able to identify which particular share of Controlled Common Stock is received in exchange for, or as a distribution with respect to, a particular share of Class X Stock or Class Y Stock, the holder may designate which particular share of Controlled Common Stock is received in exchange for, or as a distribution with respect to, a particular share of Class X Stock or Class Y Stock, provided the designation is consistent with the terms of the Distribution. Treas. Reg. section 1.358-2(a)(2).
- (7) The holding period of each holder of Class Y Stock in the Controlled Common Stock received in the Redemption will include the holding period of the Class Y Stock exchanged therefor, provided that such Class Y Stock is held as a capital asset on the date of the Redemption. Section 1223(1).
- (8) The holding period of each holder of Class X Stock in the Controlled Common Stock received in the Exchange Offer or the Clean-up Dividend will include the holding period of the Class X Stock exchanged therefor or with respect to which the distribution of the Controlled Common Stock is made, provided that such Class X Stock is held as a capital asset on the date of the Exchange Offer or the Clean-up Dividend, as the case may be. Section 1223(1).
- (9) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. sections 1.312-10(b) and 1.1502-33(e)(3).
- (10) A holder of Class X Stock who receives cash in lieu of a fractional share of Controlled Common Stock in the Exchange Offer or the Clean-up Dividend

will recognize gain or loss measured by the difference between the basis of the fractional share deemed to be received, as set forth above in rulings (4) and (5), and the amount of cash received. Section 1001. Any gain or loss will be treated as capital gain or loss, provided the fractional share of stock would be held as a capital asset on the date of the Exchange Offer or the Clean-up Dividend, as the case may be. Sections 1221 and 1222.

- (11) Payments made by Distributing (or its subsidiaries) to Controlled (or its subsidiaries), or vice-versa, under the Separation Agreement that (i) have arisen or will arise for a taxable period ending on or before the Redemption or for a taxable period beginning before and ending after the Redemption, and (ii) will not become fixed and ascertainable until after the Redemption, will be treated as occurring immediately before the Redemption. See *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed regarding: (i) whether the Distribution satisfies the business purpose requirement of Treas. Reg. section 1.355-2(b); (ii) whether the Distribution is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. section 1.355-2(d)); (iii) whether the Distribution is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. section 1.355-7); (iv) whether the Class Y Stock is stock of Distributing for federal income tax purposes; and (v) whether the Recapitalization qualifies as a reorganization under section 368(a)(1)(E).

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by

attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Sean P. Duffley
Senior Legal Counsel
(Corporate)

cc: